



City of Apache Junction

Development Services Department



PLANNING AND ZONING COMMISSION PUBLIC HEARING STAFF REPORT

DATE: March 27, 2018

CASE NUMBER: CUP-9-17

APPLICANT/OWNER: Mehmood Mohiuddin

REPRESENTATIVE: Ralph Pew, Pew and Lake, PLC

REQUEST: An application requesting approval of a Conditional Use Permit ("CUP") to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, all owned by Mr. Mohiuddin; activities may include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), sand volleyball court, cornhole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events.

LOCATION: The property is located at 2341 N. Apache Trail, at the southeast corner area of E. Lost Dutchman Boulevard and N. Apache Trail (generally to the easterly and southerly sides of the restaurants).

**GENERAL PLAN/
ZONING DESIGNATION:** Community Commercial; zoned B-1 (General Commercial).

SURROUNDING USES: North: Elks Lodge (zoned General Commercial District by Planned Development, "B-1/PD");
South: Storage lot for RVs, boats and trucks (zoned B-1); one vacant residential lot (zoned RS-54)
East: Single-family Homes (zoned RS-54);
West: Various Business lots (zoned B-1).

BACKGROUND

The lots immediately to the east and south of the Hitching Post have been used for years as minimally improved storage lots for trucks, RVs and boats. Those uses/businesses were established by previous property owners. The storage lot use to the south of the Hitching Post continues to this day. In 2006, pursuant to case CUP-2-06, the previous owners of the storage lot directly to the east of the Hitching Post were conditionally approved to erect a cell tower on part of the property, but the cell tower was never constructed and the CUP expired.

In the summer of 2014, Mr. Mohiuddin assumed ownership of the properties to the south and east of the Hitching Post and former Dash In businesses (5 parcels total, including the parcel presently containing the Hitching Post/Dash In/bull-riding arena).

In December of 2014, pursuant to case CUP-3-14, Mr. Mohiuddin applied for a CUP, requesting similar outdoor entertainment activities as with this present request. On January 27, 2015, the P&Z Commission approved case CUP-3-14 with 17 conditions (see attached Resolution No. CUP-3-14). A group of surrounding property owners then appealed the P&Z's decision to the City Council. Mr. Mohiuddin eventually requested that his CUP request be withdrawn from Council consideration. With Resolution No. 15-08 (see attached), Council accepted Mr. Mohiuddin's CUP withdrawal and thus also invalidated the Commission's approval. Since then, Mr. Mohiuddin has hosted occasional special events on his properties on a case by case basis, subject to approval by the City Council.

In 2017, Mr. Mohiuddin went through the city's lot combination process and combined his five properties into a single lot. Then, he re-split them again into three lots (see CUP-9-17 Vicinity Map attached): the storage lot parcel to the south (Lot 3); a parcel for the residence which faces Cortez on the east side (Lot 2); and another parcel which includes the restaurants, patio areas and bull-riding arena, as well as the parking areas to the west, southwesterly (western town) and east sides of the restaurants (Lot 1).

Over the last 10+ years, development agreements and subsequent amendments were also negotiated between Mr. Mohiuddin and the City Council to deal with special issues including the redevelopment of the property, the addition of the bull-riding arena and off-site parking issues. With Mr. Mohiuddin's acquisition

of the surrounding properties, the parking issue was resolved. The recent reconfiguration of the property makes this CUP request the next logical step to finally implement Mr. Mohiuddin's vision for his property, and address some of the secondary effects of the existing and proposed uses. Please note that this CUP request corresponds primarily with the development of Lot 1 on the attached site plans.

PROPOSAL

Mr. Mohiuddin proposes to create an indoor and outdoor dining and entertainment experience on his property, similar to other western themed venues in the east valley, as mentioned in the CUP narrative (attached). Because of the outdoor nature of the additional activities, the city's new zoning ordinance requires a CUP. As mentioned, proposed features and activities include: gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), sand volleyball court, cornhole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events. These events and activities would be limited to his newly configured property (Lot 1) shown on the attached site plan.

Primary access to the site will still be from N. Apache Trail and E. Lost Dutchman Boulevard. And, with the exception of the original parking lot to the west of the restaurants, all of the activity areas will be fenced in.

In the future, Mr. Mohiuddin may also apply for an extension of premises for his liquor license, particularly for the new activity area to the east of the restaurant. Events proposed to include liquor in the western town area, southwesterly of the restaurant, will still require temporary extension of premises applications on a case by case basis; but, events which do not include alcohol in this area, such as car shows or art shows, could be allowed outright with approval of the CUP.

PLANNING STAFF ANALYSIS AND FINDINGS

Relationship to General Plan:

The General Plan shows the southeast corner area of Lost Dutchman and N. Apache Trail to be a "community commercial" opportunity area. Beyond the corner to the east and south, the Plan shows "low density residential". No rezoning is involved

and the property is already zoned commercial, so this development proposal is in compliance with the General Plan.

Zoning/Site Context:

The City's new Zoning Ordinance allows "spectator sports facilities" (arguably wrestling, volleyball, cornhole, bull-riding, other outdoor games), "private recreational facilities (outdoor)", "private outdoor music festivals/events", and "restaurants/bars/clubs (with amplified outdoor music)" in the B-1 zone with approval of a CUP. The CUP request is appropriate for the zoning district and the types of uses proposed.

Staff also recognizes that just beyond the subject site, there are large lot single-family residential neighborhoods. Development Services staff is aware of complaints from neighbors, including about the new fencing around the bull-riding arena (people can't see around the corner as easily as they could in the past), noise complaints related to loudspeakers used during bull-riding events and concerts. And, noises and odors coming from the truck storage lot (not a part of this CUP and being dealt with separately through code compliance). Staff will recommend conditions of approval to try and mitigate issues relative to this CUP request, like we did with the previous CUP request.

Evaluation of Criteria for a CUP:

Section 1-16-12-D-3 of the Zoning Ordinance establishes certain land use-related criteria for the Commission to consider when evaluating Conditional Use Permits. Staff's analysis of said criteria, with regard to this request, is as follows:

- a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use. *[The property is accessed via N. Apache Trail and E. Lost Dutchman Boulevard, which are designated major arterials. However, this property also lies in the so-called "Y" area, intended to be more rural in nature, including relaxed street standards. Off-street parking for both minor and larger events is proposed to be accommodated on applicant's property. The narrative states that the applicant will carefully coordinate activities on the property so that events can be held and adequate parking accommodated on-site. There should not be any public parking either along the Trail or Lost Dutchman. The parking lots are required to be improved subject to the city's options for dust control and the accessible parking spaces are required to*

be paved with hard surface access to the buildings. The restaurants have restrooms, water and electric services, but for occasional larger special events, Mr. Mohiuddin will probably still request the use of "porta-johns". With a possible addition of 50 or more people to the occupant load of the facility, staff is still investigating the possible requirement of additional permanent restroom facilities. At minimum, at such time as additional permanent buildings are constructed on the property, and/or when sewer service reaches the site, additional public restroom facilities may also need to be constructed.]

- b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. [The proposed uses/activities on Lot 1 should not produce any negative odors, gas, smoke, heat or glare. Dust will be mitigated with treated parking areas and by watering down of activity areas before large events. Lighting is subject to dark sky regulations and/or by possibly limiting some events to end at dusk. Noise impacts from outdoor music and loudspeakers may be lessened with strategic placement, but staff is also recommending mitigating conditions for the Commission's consideration to address this issue.]
- c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values. [Mr. Mohiuddin will need to be vigilant about noise and other problems about which neighbors have complained in the past. If problems persist or worsen, the City may schedule the CUP for further review should certain activities allowed under the CUP become a neighborhood nuisance.]
- d) Compatibility with surrounding uses and structures. [Surrounding uses and properties to the west and north are commercial or zoned commercial, so those properties should not be negatively affected. At a minimum, sound and light mitigating screening, landscaping and distance buffers should be provided between the outdoor entertainment venue and the residential properties to the east and south.]
- e) Conformance with the General Plan and City policies. [There are no General Plan issues. Operator sensitivity, reasonable and safe conduct of activities, reasonable hours and days for conducting larger events, effective buffers

and adequate public facilities should help head off most problems.]

- f) Screening and buffering of uses. *[Staff is suggesting specific and general conditions under the Recommended Motion to mitigate perceived present and future negative impacts.]*
- g) Unique nature of the property, use and/or development's physical characteristics. *[This proposal has the potential to bring something unique and special to Apache Junction. An open air concert venue, especially with spectacular views of Superstition Mountain, could rival places like Sedona and Red Rock. It could become a destination point, a year-round attraction. And, if approved, will require monitoring, improvements and adjustments along the way.]*

PUBLIC OUTREACH/INPUT

Public hearing notices have been mailed to all property owners within 300 feet of the site. Comments and input have been sought. A neighborhood meeting conducted by the applicants will be held on March 22 (see meeting invitation to neighbors). Staff has requested a written summary of said meeting for the Commission's information at their public hearing.

Staff also held a meeting with several of the neighbors on March 19, at their request. The neighbors informed us of their on-going issues and concerns with current and proposed activities at the Hitching Post. They also presented us with videos they plan to present to the Commission, as well as written questions, comments, concerns, photos, their proposed site plan and other information items for the Commission's consideration. Attached please find staff's notes from that meeting, as well as all of the items we have received from the neighbors relative to this CUP request. We believe the items speak for themselves and we tried to answer as many of the neighbor's questions as we could.

P&Z COMMISSION WORK SESSION DISCUSSION

At their meeting on March 13, staff and the Commission held a discussion on this item. Commissioners basically requested three information items from staff: 1) police reports on complaints against the Hitching Post, to include who complained, what dates and times; 2) information on other complaints against similar businesses such as Filly's, Cowboys Up, Superstition

Skies; and 3) information relative to the status of the Cortez alignment on the east side of the Hitching Post property.

Attached please see a memo dated March 16, 2018, from the police department summarizing recent complaints (going back about 6 months) against the Hitching Post and the other similar businesses about which we enquired. Also attached are those detailed police reports. It appears most of the complaints relate to bull-riding nights, but there were also a couple of parking complaints and a complaint about the storage yard. There were no complaints about the other businesses.

Also attached please find an e-mail and drawings dated March 19, 2018, from the city engineer explaining the status of Cortez. Basically, Emile discovered that the west half of the original Cortez Road easement has in fact been abandoned for roadway purposes. Mr. Mohiuddin will still need to work with the Public Works Department to determine the exact status of the roadway ownership, if underlying utility easements still exist and if it is or can be put back in his ownership for his use.

PLANNING DIVISION RECOMMENDATION

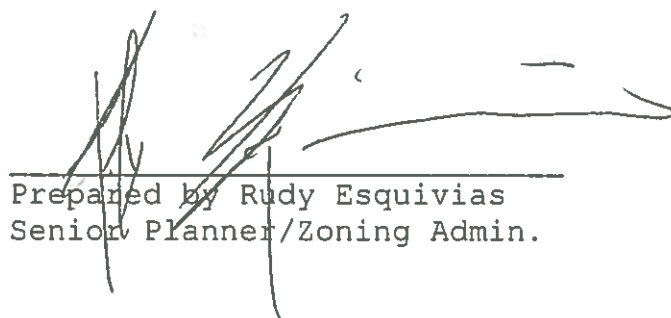
The Planning Division recommends approval of CUP-9-17, but not in full agreement with the applicant's request. We recommend approval subject to very specific conditions and very specific performance items for the applicant to accomplish within one year of approval. Staff believes these conditions are necessary to mitigate the impact of both the existing and proposed expanded uses on the property, in light of the impact it has had on the neighborhood thus far (in accordance with the evaluation of the CUP criteria) and to try and preclude future secondary negative effects.

RECOMMENDED MOTION

I move that the Planning and Commission (APPROVE/DENY) case CUP-9-17, a request for a Conditional Use Permit by Mehmood Mohiuddin, to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, all owned by Mr. Mohiuddin; activities may include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), sand volleyball court, cornhole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for

the activities and events; subject to the following conditions of approval:

(See attached "CUP-9-19 Recommended Conditions (3-27-18)"



Prepared by Rudy Esquivias
Senior Planner/Zoning Admin.

The Commission's decision is final, unless an aggrieved individual or party appeals said decision (in writing, with reasons and accompanied by all applicable appeal fees) to the City Council within 20 calendar days of the Commission action, and in accordance with the applicable procedures set forth in the Apache Junction Zoning Ordinance, Section 1-16-12.

Attachments:

- Exhibit #1 - CUP application (p. 1)
- Exhibit #2 - CUP-9-17 Vicinity Map (p. 2)
- Exhibit #3 - Previous resolution approved by P&Z, Res. #CUP-3-14 (p. 3-7)
- Exhibit #4 - Previous Reso. #15-08, accepting CUP withdrawal, denying CUP (p. 8-11)
- Exhibit #5 - Staff's letter to Mr. Pew dated 2-5-18 (p. 12-15)
- Exhibit #6 - Mr. Pew's response to staff's letter dated 2-26-18 (p. 16-21)
- Exhibit #7 - CUP narrative revised 2-27-18, with site plans (p. 22-35)
- Exhibit #8 - Addendum to narrative dated 3-1-18 (p. 36-37)
- Exhibit #9 - Applicant's invitation to neighborhood meeting, dated 3-6-18 (p. 38)
- Exhibit #10 - Image of property showing location of recommended fences (p. 39)
- Exhibit #11 - Staff's notes from 3-19-18 meeting with neighbors and their public Input (p. 40-58)
- Exhibit #12 - 3-16-18 e-mail from PD and police reports (p. 59-66)
- Exhibit #13 - 3-19-18 e-mail from City Engineer (p. 67-71)

CUP-9-17 RECOMMENDED CONDITIONS (3-27-18)

CUP-9-17 Specific Conditions:

- 1) Within six (6) months of CUP-9-17 ("CUP") approval, the property owner shall construct a minimum 12-foot-high solid wood screen fence designed in the same "western town" theme as the existing fence to the south of the Hitching Post Restaurant. This fence shall be constructed along the east side of the bull-riding activity area and shall continue, trace and surround the proposed new activity areas easterly and southerly of the restaurants, as proposed under the CUP. No additional outdoor activities allowed by this CUP in the expansion area shall occur until said minimum 12-foot screen fence has been properly permitted, inspected and approved by the Development Services Department.
- 2) Within one year of CUP approval, a properly engineered and permitted 8-foot-tall decorative block wall shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post. Said wall shall be set back 10 feet from the edge of the right-of-way and reserve a 20-foot by 20-foot cutoff corner for visibility. Outside of said walls facing Lost Dutchman and Cortez, within the 10-foot strip, the property owner shall install landscaping and irrigation improvements in compliance with the city's "landscape code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8 Landscape Regulations. Said landscape plan is subject to review and approval by the city's Development Services Department Planning Division.
- 3) Within one year of CUP approval, the property owner shall have a Traffic Impact Analysis prepared for his property, subject to review and approval by the city engineer, to determine proper access to said properties from N. Apache Trail and from E. Lost Dutchman Boulevard, including the possible construction of deceleration lanes and other traffic safety improvements.
- 4) Within one year of CUP approval, the property owner shall construct additional, permanent, restroom facilities to serve the new outdoor activity areas. The number of restrooms is to be determined in coordination with the city's Building Official and the Pinal County Health Department, based on occupancy load estimates for all customer accessible activity areas.
- 5) Within one year of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code,

Volume II, Land Development Code, Chapter 1 Zoning Ordinance,
Article 1-10, Outdoor Lighting Regulations.

- 6) No more than six (6) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 7pm, local time. These events will be held only between October 15 and May 15 yearly. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights off for any events held in the western town area shall be 9pm.
- 7) For all outdoor concert (or similar) events held in the western town area, the venue operators shall hire off-duty Apache Junction police officers to help with traffic control and safety. Should any of the uses under this CUP become a demonstrated traffic safety hazard, additional traffic safety improvements may be required of the venue operators if warranted.
- 8) New hours for bull-riding events under this CUP shall be 7pm to 9pm, Thursdays and Saturdays. Junior rodeo events may be held at the same time and in place of, or as part of normal bull-riding nights and hours.
- 9) Other events of similar or lesser intensity may also take place in the bull-riding arena, in place of and on the same days and times of normally allowed bull-riding events.
- 10) All music and/or announcer loudspeakers used for events held in the bull-riding arena shall be shut off at 9pm and arena lights shall be shut off no later than 10pm.
- 11) The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker use from any of the outside activity areas is directed away from and is conducted in such a manner that minimizes disturbance of neighboring residential properties.
- 12) All activities held in the newly defined east expansion area shall end at 9pm, Sunday through Thursday; and 10pm on Fridays and Saturdays, including any ambient music.
- 13) The RV, boat and truck storage lot to the south of the CUP subject area is not a part of this CUP request and shall not be used for any employee and/or event or activity overflow parking at any time. Additionally, there shall be no parking allowed (related to activities and events at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
- 14) This CUP approval incorporates by reference the submitted site plans date stamped 2-26-18, illustrating the proposed

development and activity areas of the property. The property owner shall not deviate from said plans without the Development Services Director's approval for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.

- 15) Substantial increases in intensity and/or major changes to the CUP, in the opinion of the Development Services Director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise; occupancy/capacity issues; further expansion of activity areas; increase in or violation of hours of operation; increase in the number of events or the hosting of incompatible events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
- 16) The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property; or a new properly permitted free-standing monument sign may be placed on the property along E. Lost Dutchman Boulevard to replace the sign that is there now, in accordance with the city's "sign code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11 Sign Regulations.
- 17) This CUP for an outdoor entertainment venue shall not be transferable upon sale of any part of the property.
- 18) All requirements and obligations pertaining to the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue remain in full force and effect until such time as the City Council nullifies the agreements.
- 19) There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.
- 20) This CUP must be renewed no later than three years from the effective date of approval. Therefore, the property owner must file a timely and complete application to renew the CUP several months before the renewal date. Failure to renew the CUP shall cause all approvals under this CUP to expire.
- 21) Prior to the one-year anniversary date of this CUP approval, planning staff shall bring this item back for Commission review of compliance with conditions and consideration of further Commission requirements or actions.

CUP-9-17 Standard Conditions:

- 22) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 23) All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the city's "Sign Code" (as referenced in 16 above), including free-standing signs, permanent attached signs, window signs and banners.
- 24) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which require permits, in accordance with the concept plans and narrative received for CUP-9-17.
- 25) All parking lots shall be treated for dust proofing in accordance with the options contained in the city's Engineering Guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9 Health and Sanitation, Section 9-1-3(B) Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the Development Services Engineer.
- 26) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(5) Expiration, the applicants shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or else the CUP shall become void.
- 27) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(6) Revocation, the Planning and Zoning Commission shall reserve the right to reconsider the Conditional Use Permit approval for the outdoor entertainment venue, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.